

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:09CR349
)	
v.)	
)	
THEODORE MANOS,)	ORDER
)	
Defendant.)	
)	

This matter is before the court on the defendant's motion to vacate under 28 U.S.C. § 2255. Filing No. 58. Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a charge of possession of child pornography, 18 U.S.C. § 2252(a)(4)(B) and 2252(b)(2), and forfeiture, 18 U.S.C. § 2253. The defendant was sentenced to 10 years of imprisonment. In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel resulting in the deprivation of the defendant's rights under the Sixth Amendment. Filing No. 58. The defendant alleges that he had ineffective counsel before pleading guilty and that counsel did not object to the five-level increase in the base offense level for defendant's sentence. *Id.*

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate;
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.

DATED this 20th day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon

JOSEPH F. BATAILLON

Chief United States District Judge